



Legislation Text

File #: 34941, **Version:** 1

Fiscal Note

Funds are available in the Bikeways capital project account number CS53-58110-810375-00-53W1319.

Title

Authorizing the execution of a Purchase and Sale Agreement between the City of Madison and AnchorBank FSB for the purchase of two lots located at 513 Jacobson Avenue and 3533 Furey Avenue for the Irwin A. and Robert D. Goodman Path and a storm water pond.

Body

The Common Council enacted Resolution RES-14-00244 on April 8, 2014 which determined a Public Purpose and Necessity and adopted a Relocation Order for the acquisition of land interests required for the construction and maintenance of the Irwin A. and Robert D. Goodman path, a multi-purpose (bicycle and pedestrian path) and on-street bike route from the Capital City path at Marquette Street to the Marsh View path at Highway 30 (the "Path"). A portion of the land interests that are required to be acquired for the path are on two lots owned by AnchorBank FSB at 513 Jacobson Avenue and 3533 Furey Avenue within the City of Madison (collectively, the "Property").

Subsequent to the adoption of the resolution of Public Purpose and Necessity and the Relocation Order, City Engineering determined that the portion of the Property that is not within the land interests required to be acquired for the Path could be used to construct a storm water pond that would reduce the amount of suspended solids, phosphorous and other pollutants from entering lakes and streams. New developments within the City have storm water ponds. Older areas of the City do not have ponds and acquiring the entire Property will provide an opportunity to the City to install a storm water pond at this location and reduce pollution entering Starkweather Creek.

A Letter of Intent containing the terms and conditions of a Purchase and Sale Agreement (the "PSA") has been negotiated and executed between the City and AnchorBank FSB for the purchase of the Property. Adoption of this resolution will authorize the execution of the PSA.

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Madison hereby authorizes the execution of a Purchase and Sale Agreement (the "Agreement") between the City (the "Buyer") and AnchorBank FSB (the "Seller") for the purchase of two lots that are owned by the Seller located at 513 Jacobson Avenue and 3533 Furey Avenue, Madison, Wisconsin (collectively, the "Property"), legally described in Exhibit A below and depicted on attached Exhibit B, for the Irwin A. and Robert D. Goodman Path and a storm water pond, on the following terms and conditions:

1. The Property. The Buyer shall purchase and the Seller shall sell and convey by Special Warranty Deed (the "Deed") fee simple title to the Property, including all related improvements if any located thereon and all appurtenances thereto.
2. Effective Date. The "Effective Date" shall be the later date of execution of the Agreement by the Seller or the Buyer, as indicated on the signature page.
3. Purchase Price. The total purchase price of the Seller's interest in the Property (the "Purchase Price") shall be One Hundred Thousand Dollars (\$100,000). The Purchase Price shall be payable in cash at closing, subject to the adjustments and prorations herein provided.

4. Delivery of Documents. Within ten (10) days of the Effective Date, the Seller will reproduce at the Seller's expense and send to the Buyer at the Buyer's office copies of all environmental studies, reports, surveys, permits, applications and remediation plans or assessments of the Property and all studies, reports, plans or assessments related to the condition of the Property in the Seller's possession or control. Said documents are provided for the Buyer's convenience and without representation or warranty of any kind by the Seller.
5. Buyer's Contingencies. The Buyer shall have ninety (90) days from the Effective Date (the "Buyer's Contingency Period") to satisfy or waive the following contingencies or to otherwise terminate the Agreement, unless extended as provided herein:
 - a. Environmental. The Buyer obtaining, at its sole cost and expense, a Phase 1 and/or Phase 2 environmental assessment of the Property that is satisfactory, in the Buyer's sole discretion, to the Buyer.
 - b. Appraisal. The Buyer obtaining, at its sole cost and expense, an appraisal supporting the Purchase Price.
 - c. Budget Approval. The Common Council of the City of Madison approving budget authorization for the purchase of the Property.

The Buyer's Contingency Period may be extended for an additional thirty (30) days by written notice from the Buyer to the Seller delivered prior to expiration of the Buyer's Contingency Period.

6. Access to the Property. The Buyer and the Buyer's authorized agents and contractors shall be permitted access to the Property for the purpose of conducting a Phase 1 or 2 environmental assessment and/or wetlands delineation survey of the Property at reasonable times with at least twenty-four (24) hour notice to the Seller. The Buyer will repair all damages caused by its inspections, at the Buyer's cost, so that the condition of the Property is returned to as good or better condition as existed prior to the inspection.
7. Title Insurance. The Seller shall provide to the Buyer at the Seller's expense at least ten (10) business days prior to closing a commitment from a title insurance company (the "Title Company") licensed in Wisconsin to issue title insurance in the amount of the Purchase Price upon the recording of proper documents, together with a gap endorsement. The commitment shall show title to the Property, as of a date not to be in the condition called for in the Agreement, and further subject only to liens which will be paid out of the proceeds of the closing and to any standard title insurance exceptions acceptable to the Buyer. The Buyer shall notify the Seller of any valid objection to title, in writing, prior to closing. The Seller shall have a reasonable time, but not exceeding fifteen (15) days, to remove the objections and closing shall be extended as necessary for this purpose. Should the Buyer be unable or unwilling to carry out the Agreement by reason of a valid legal defect in title which the Seller is unwilling to waive, the Agreement shall be void.
8. Lease. The Seller shall represent that the Property is currently not leased and the Seller agrees that it shall not enter into any new lease or rental agreement for the Property, or any portion thereof, during the Buyer's Contingency Period and through the date of closing, without the prior written consent of the Buyer.
9. Closing.
 - a. Closing shall occur within thirty days (30) days after the satisfaction or waiver of the Buyer's Contingencies unless an extension to the closing date for up to an additional thirty (30) days is

requested by the Buyer in writing and such written request is accompanied by a non-refundable Two Thousand Five Hundred Dollars (\$2,500) deposit (the "Extension Payment) payable to the Seller. Said Extension Payment shall be applied as a credit against the Purchase Price at closing or, if the Agreement is terminated due to the default of the Seller, be promptly refunded to the Buyer.

- b. The Seller shall agree to execute and deliver to the Buyer at closing the Deed conveying the Property to the Buyer free and clear from all liens and encumbrances, excepting the following: Municipal and zoning ordinances and agreements entered under them; recorded easements for the distribution of utility, municipal services; easements; recorded building and use restrictions and covenants; and, any matters reflected on the title insurance commitment referenced in paragraph 8, above, to which the Buyer does not timely object.
- c. The Buyer shall pay all recording/filing fees except that the Seller shall pay the recording/filing fees for such documents as are required to be recorded/filed in order to cause title to the Property to be in the condition called for by the Agreement.
- d. All 2014 real estate taxes with respect to the Property shall be prorated between the Buyer and the Seller as of the date of closing based upon the latest known assessment and latest known mil rate.
- e. The Seller shall be responsible for any existing, area assessments or any other charges payable to any municipality or utility with regard to the Property as of the date of closing.
- f. The Seller shall pay any Wisconsin Real Estate Transfer fee due in connection with conveyance of the Property.
- g. The Seller and/or the Buyer shall each pay any and all or their respective broker commissions or fees due in connection with the sale of the Property.

BE IT FURTHER RESOLVED that the funds in amount of \$125,000 are authorized for the acquisition of the Property (\$100,000 for the Purchase Price, \$20,000 for expenses associated with the Buyer's Contingencies and \$5,000 in closing costs including prorated real estate taxes).

BE IT FINALLY RESOLVED that the Mayor and City Clerk are authorized to execute, deliver and record such documents and to take such other actions as shall be necessary or desirable to accomplish the purposes of this resolution.

EXHIBIT A
Property Legal Description

3533 Furey Avenue
Parcel No: 251/0710-051-0102-8

Lot 4, Certified Survey Map No. 9494, as recorded on October 27, 1999 in Volume 54, Pages 124-126 of Certified Surveys as Document No. 3167139, in the City of Madison, Dane County, Wisconsin.

513 Jacobson Avenue
Parcel No: 251/0710-051-0101-0

Lots 523, 524, 554, 555, 556, 557 and the East ½ of Lots 525, 526, and 527, First Addition to Clyde A. Gallagher Park Subdivision, in the City of Madison, Dane County, Wisconsin, also those parts of vacated Furey Avenue, Webb Avenue a/k/a Webster Avenue, and Stock Avenue as set forth in a resolution recorded on

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October 3, 1984 in the Office of the Register of Deeds for Dane County, Wisconsin in Volume 6146 of Records, Page 57 as Document No. 1853522.